IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

RSA No.207/1995
Reserved on.8.5.2007
Decided on. 25.7.2007

Chami . **…Appellant.**

Versus

Ram Chand and another. **…Respondents**

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]. No.

For the petitioner : Mr. B.K. Sood, Advocate vice Mr. K.D. Sood, Advocate.

For the respondents Mr. R. K. Sharma, Advocate.

Rajiv Sharma, J.

This second appeal is directed against the judgment and decree passed by the Additional District Judge, Kullu dated 11.1.1995 passed in civil appeal No. 6/93.

The brief facts necessary for the adjudication of the present appeal are that the appellant-plaintiff (hereinafter referred to as the plaintiff for convenience sake) had filed civil suit in the court of Sub Judge Ist Class, Kullu on 20th September, 1990 for declaration and consequential relief of permanent prohibitory injunction against the defendants. The trial court had framed the following issues on 30th August, 1991:

1. **Whether the plaintiff is joint owner in possession of the suit land? OPP.**
2. **Whether the plaintiff is entitled to the relief of injunction as alleged? OPP.**

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? No.

3. **Whether the plaintiff is the widow of deceased Sh. Megh Singh as alleged? OPP**
4. **Whether deceased Sh. Megh Singh executed a valid and last will dated 5.10.1981 in favour of defendant No.1 as alleged? OPD-1**
5. **Whether the suit is within limitation? OPP**
6. **Whether the suit has not been properly valued for purpose of court fee and jurisdiction? If not what is the correct value? OP Parties.**
7. **Whether the plaintiff has no locus standi to file the suit? OPD.**
8. **Relief.**

The trial court had recorded the following findings on the aforesaid issues:

Issue No.1 Yes.
Issue No.2 Yes.
Issue No.3 Yes.
Issue No.4 No.
Issue No.5 Yes
Issue No.6 properly valued.
Issue No.7 No.
Issue No.8 Suit decreed as per operative portion of judgment.

The suit of the plaintiff was decreed with costs to the effect that the plaintiff and Proforma respondent No.2 had inherited the suit property in equal share and the plaintiff was owner in possession of the suit property as detailed in the plaint. It is further averred that defendant No.1 had no right, title or interest therein and as a consequential relief defendant No.1 was permanently restrained from claiming any right, title or interest in the land in suit from causing any unlawful interference in the ownership and possession of the plaintiff with respect to the suit property. Feeling aggrieved by the judgment and decree passed by the Sub Judge 1st Class dated 6.1.1993, the defendant filed an appeal before the learned

Additional District Judge, Kullu on 23.1.1993. The Additional District Judge had framed the following points for determination:

Point No.1 **Whether it is proved on record that the deceased Megh Singh had executed a valid will bequeathing his estate in favour of the defendant-appellant as claimed?**

Point No.2 **Final order.**

The Additional District Judge had recorded the following findings on the aforesaid points:

Pont No.1 Yes.

Point No.2 The appeal is accepted as per operative portion of judgment.

The Additional District Judge had allowed the appeal and the judgment and decree passed by the trial court dated 6.1.1993 was set aside and consequently the suit of the plaintiff was dismissed.

The second appeal was admitted on the following substantial questions of law:

1. **Whether the original will could be assumed to have been proved on the production of the xerox copy of the will Ex.DW-3/A in the absence of the production of the original being proved by the witnesses?**
2. **Whether the findings are based on misconstruction and misreading of oral and documentary evidence particularly the basic document of title Ex.DW-3/A.**
3. **Whether the will Ex.DW-3/A is shrouded by suspicious circumstances which have not been explained and could be relied upon especially when the natural heirs have been excluded.**

Mr. K.D. Sood, Advocate had strenuously argued that the judgment and decree of the Additional District Judge, Kullu dated 11.1.1995 is not sustainable in the eyes of law.

Mr. R.K. Sharma, Advocate had supported the judgment and decree dated 11.1.1995 passed by the Additional District Judge, Kullu.

I have heard the learned counsel for the parties and perused the record.

Since all these questions are inter connected, therefore, can be conveniently discussed together. The certified copy of the will Ex.DW-3/A was placed on record since the original will was pending with the office of Sub Registrar, Kullu for registration. The original will was produced before the trial court when the evidence of defendant was to be recorded by Shri Rajinder Sood, DW-2, Reader to the Sub Registrar, Kullu. He proved the certified copy Ex.DW-3/A from the original will. DW-3 Shri Nanak Chand had testified that he had scribed the will at the instance of testator Megh Singh in the presence of Shri Dev Dutt, Jai Chand and Jiwan Lal. He had also stated that the same was duly entered in his register at Sr. No. 304 on October 5, 1981. Shri Jiwan Lal one of the marginal witnesses had also appeared as DW-4. Ex.DW-3/A is Xerox copy of the original will. The witnesses have stated that Ex.DW-3/A bears their signatures. It is stated in the will that the plaintiff Chami was the wife of Shri Megh Singh at the relevant time, but she had left his house without looking after him. It has further come in the will that his real brother i.e. the defendant was looking after Shri Megh Singh. The fact that Jiwan Lal DW-4 was closely related to the parties will not discard his testimony. On the basis of the statements made by DW-3 Nanak Chand and DW-4 Jiwan Lal it cannot be presumed that the will was shrouded with suspicious circumstances. The original will was lying in the office of the Sub Registrar, Kullu for registration and it has been stated by DW-2 Rajinder Sood. The judgment of the Additional District Judge is based on correct appreciation of the evidence brought on record. The Appellate Court had

come to a just conclusion that the will Ex.DW-3/A had been voluntarily executed by Sh. Megh Singh in favour of the defendant to the exclusion of the plaintiffs. There is no question of law much less to say substantial question of law involved in the second appeal.

As a result, the appeal is dismissed. There shall be no order as to costs.

(Rajiv Sharma), Judge

July 25, 2007
Awasthi